

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington, DC 20350-1000

SECNAVINST 5000.34A
NIG OOG
21 February 1990

SECNAV INSTRUCTION 5000.34A

From: Secretary of the Navy
To: All Ships and Stations

Subj: OVERSIGHT OF SENSITIVE
ACTIVITIES WITHIN THE
DEPARTMENT OF THE NAVY

Ref: (a) DOD Regulation 5240.1-R of
Dec 82
(b) SECNAVINST 3820.3D
(c) DODDIR 5240.1 of 25 Apr 88
(d) SECNAVINST 5820.7B of
28 Mar 88

1. Purpose. To confirm the authority and responsibility of the Secretary of the Navy for oversight of sensitive activities, as defined in para. 4 below, and to issue policies and procedures for oversight through the timely reporting and periodic review of such activities. This instruction reconfirms the existence of the Sensitive Activities Review Board (SARB), formerly the Special Activities Review Board, and prescribes its composition and responsibilities. This instruction has been substantially revised and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 5000.34.

3. Background. Sensitive Activities by their nature can be subject to abuse, illegality, or overzealous execution, and they may have important political and public relations ramifications. The SARB has been created to ensure that Department of the Navy programs and support pertaining to sensitive activities comply with applicable law, regulation, and policy; and also to ensure implementing directives clearly and practically define levels of authority for specific activities.

4. Definitions

a. Special Activities. Activities conducted in support of national foreign policy objectives

abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media, and do not include diplomatic activities or the collection and production of intelligence or related support functions. (Special activities are authorized by Presidential finding, normally in writing, that each such activity is important to the national security of the United States).

b. Sensitive Activities. Special activities, all actions in support of special activities, and similarly significant activities involving Department of the Navy personnel which can raise serious issues of unlawful conduct, government ethics, or unusual danger to Department of the Navy personnel or property. These include, but are not limited to:

(1) Department of the Navy conduct or support of counterterrorist training activities.

(2) Department of the Navy Operations and Support Special Access Programs (OS-SAP).

(3) Department of the Navy support of law enforcement agencies, including anti-drug activities, as authorized by reference (d).

c. Support. Support is considered to encompass significant training or planning for special activities or the provision of personnel, funds, materiel, or cover for other sensitive activities.

d. Cover. For the purpose of this instruction, cover will be considered to be those measures used to protect funding, personnel, plans, or operations.

e. Questionable Activities. Any conduct that may constitute a violation of applicable law, regulation, or policy.

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f. **Special Access Program.** Any program imposing need-to-know or access controls beyond those normally required for access to Confidential, Secret, or Top Secret information. Such a program includes but is not limited to special clearance, adjudication, or investigation requirements; special designation of officials authorized to determine need-to-know; or special lists of persons determined to have a need-to-know.

5. Scope and Applicability

a. This instruction applies to all Department of the Navy components and their personnel. It does not constitute authority for any Department of the Navy component or person to conduct or support sensitive activities.

b. Unresolved questions of interpretation pertaining to this instruction should be referred to the Naval Inspector General. Matters relating to the Marine Corps shall be decided in consultation with the Deputy Naval Inspector General for Marine Corps Matters. This instruction does not pertain to intelligence-related support as governed by reference (a).

6. Policy

a. The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) shall be responsible for ensuring that the Under Secretary of the Navy (UNSECNAV) is informed in a timely manner of sensitive activities undertaken or planned.

b. Nothing in this instruction is intended to exempt Department of the Navy components and activities from requirements to comply with separate oversight obligations such as those contained in references (a) and (b).

c. Sensitive activities shall be undertaken only when specifically approved by proper authority. Such actions shall not be undertaken without adequate consideration of the legality or

propriety of the proposed action. Sensitive activities that risk unusual harm to personnel or risk embarrassment to the United States Government are of particular interest.

d. Reference (c) provides that no DOD component may conduct special activities in peacetime unless the President so directs.

e. Department of the Navy Components shall not request any other person or entity to undertake, participate in or provide support to questionable sensitive activities.

f. All communications and correspondence required by this instruction will strictly adhere to security directives governing the handling and transmission of such information.

7. Action

a. **Sensitive Activities Review Board.** The SARB is chaired by the Naval Inspector General (NAVINGEN), with the Deputy Naval Inspector General for Marine Corps Matters (DNIGMC), the Judge Advocate General (JAG) of the Navy and the General Counsel (GC) of the Navy as principal members. When Marine Corps matters are under review, the Staff Judge Advocate to the Commandant and the Counsel to the Commandant will also participate as members of the SARB. The Assistant for Special Programs to the Under Secretary of the Navy may participate as a consultant to the Board. The SARB will meet quarterly and as directed by the UNSECNAV or when members of the SARB have a matter or matters that require immediate attention. The Chairperson can also appoint ad hoc members, as necessary, to consider individual issues in which special expertise is required. The SARB will review and evaluate sensitive activities for propriety and compliance with law and policy. The SARB will direct such investigations; reviews or inquiries as required by the UNSECNAV. The SARB will inform the UNSECNAV of any sensitive activity that it believes violates applicable laws, directives or policies.

Participation on the Board, and receipt of briefings and review of information otherwise provided, shall not relieve its members of the responsibilities and authorities abiding in their individual capacities.

b. **Components.** Navy components shall report all requests for the conduct or support of significant sensitive activities via their chain of command, to CNO. Marine Corps components shall report to CMC. Reports will be submitted by the highest authority in the chain of command having cognizance of the activity. Requests for support of sensitive activities must be reported even when they are made by other departments or agencies, including other military departments. Requests for support which include a provision against informing the chain of command will be reported only to UNSECNAV.

c. **CNO and CMC.** CNO and CMC shall forward to the UNSECNAV, by 31 October, an annual report of sensitive activities newly undertaken or planned within the Navy and Marine Corps. The report shall be consistent with its singular purpose of enabling the UNSECNAV to identify activities and issues appropriate for SARB review. This annual report need not include any activity already included in the reports required by reference (d). A copy of these reports of assistance to law enforcement agencies, including drug activity, shall be provided to the Inspector General when submitted.

d. **Department of the Navy Personnel.** All Department of the Navy Personnel shall be responsible for familiarizing themselves with the policies and procedures outlined in this instruction and for reporting questionable activities. Normally this reporting is through the appropriate chain of command; however, under exceptional circumstances, reporting may be made directly to the UNSECNAV through appropriate security channels.

e. **Judge Advocates.** Commanders who contemplate the conduct or support of sensitive activities, or from whom sensitive activities or support are requested, or who are considering

whether certain activities are sensitive activities within the meaning of this instruction, should in the sound exercise of their command discretion consult an appropriate judge advocate for advice. Judge Advocates to whom these questions are referred should freely consult with specialists at the Office of the Judge Advocate General (Special Programs Division) or with the SJA to CMC (Operational Law), as appropriate. All such correspondence will be within the appropriate secure channels.

f. **Information and Files.** Information and files pertaining to sensitive activities will not be subject to routine inspections, audits, and investigations by personnel or agencies unless appropriately cleared and authorized by the UNSECNAV or higher authority.

8. **Reports.** The reports required by this instruction are exempt from reports control by SECNAVINST 5214.28.

H. LAWRENCE GARRETT, III
Secretary of the Navy

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